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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/623,986	07/21/2003	Govindan Gopinathan	GOPI 0116 PUS1	5509

22045 7590 09/09/2004

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EXAMINER

NASSER, ROBERT L

ART UNIT	PAPER NUMBER
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3736

DATE MAILED: 09/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/623,986	Applicant(s) GOPINATHAN ET AL. <i>GN</i>	
	Examiner Robert L. Nasser	Art Unit 3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 July 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 20-61 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 20-61 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/20/2003</u> . | 6) <input type="checkbox"/> Other: _____  |

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The examiner notes that the current =subject matter finds support back to the grandparent application, 09/188971, filed 1/10/1998, but not in the great grandparent application, 09/084647.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 20-61 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-64 of U.S. Patent No. 6595918. Although the conflicting claims are not identical, they are not patentably distinct from each other because the two sets of claims are merely differently worded versions of each other.

Claims 20-61 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-100 of U.S. Patent No. 6248064. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are merely differently worded versions of each other.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 48-54, 60, and 61 are rejected under 35 U.S.C. 102(b) as being anticipated by Berlant 5067478. Berlant shows two gloves each of which has an electrocardiograph electrode 30 on the palm thereof, and an interface, e.g. wires 21a and 21b to transmit information to a remote location. The examiner notes that the electrodes in Berlant are not used to measure an EKG, but are EKG electrodes capable of making such a measurement. Applicant might exploit this distinction to define over Berlant. Claims 53 and 54 are rejected in that there are 2 sensors 30.

Claims 48, 60, and 61 are rejected under 35 U.S.C. 102(e) as being anticipated by Hedgecock et al 5797854. Hedgecock shows two members 16 and 18, each contoured to a finger of a person. The examiner notes that the devices are contoured to a finger on each hand such that members 16 and 18 may be applied to different hands. The device further had an interface, i.e. the wires connecting the electrodes to the box 10. With respect to claims 48 and 61, the examiner notes that the members 16 and 18

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are contoured to any person's fingers. Therefore, they are countered to person A's fingers and can also measure signals from person B when person B wears the device. If applicant were to amend the claim to recite that the sensors were capable of measuring signals from a second person while the member was being worn by a first person, then it would overcome this rejection.

Claims 48-50, 52, 60, and 61 are rejected under 35 U.S.C. 102(b) as being anticipated by Allison 4016868. Allison shows a device with a plurality of gloves, each including a plurality of electrodes on the palmar side of the gloves (see figure 5), and a n interface for sending the signals to a remote location, that is, remote from the hand. (see column 3, line 31-41). The examiner notes that it appears that the electrodes are external to the device of Allison and therefore can measure signals from a second person while being worn by a first person.

Claims 20-47 would be allowable if the double patenting rejection were overcome. Claims 20-47 define over the art of record in that none of the art shows a first and second member contoured to the hand, as claimed, with a defibrillator device.

Claims 55-59 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims and if the double patenting rejection were overcome. Claims 55-59 define over the art of record in that none of the art shows the first and second members, with the claimed diagnostic devices.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Zirps et al, Prochazka et al, Anaplotis, Patton et al, Metrick, and Zielinski et al all show devices countered to a first hand of a first person that measures signals from a second person when worn on the first person's hand.

Tardiff et al shows a device with gloves for sensing to hand movements.

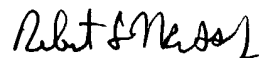
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert L. Nasser whose telephone number is (703) 308-3251. The examiner can normally be reached on Mon-Fri, variable hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (703) 308-3130. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert L. Nasser  
Primary Examiner  
Art Unit 3736

RLN  
September 7, 2004.



ROBERT L. NASSER  
PRIMARY EXAMINER